

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Isabelle James	Team: Squad #9	CCRB Case #: 201703884	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 03/17/2017 7:07 PM	Location of Incident: § 87(2)(b)	Precinct: 45	18 Mo. SOL 9/17/2018	EO SOL 9/17/2018	
Date/Time CV Reported Wed, 05/10/2017 10:23 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 05/16/2017 12:07 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. SGT Luis Martinez	05364	944776	GVSD Z2

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Martha Nova	16220	959849	045 PCT
2. POM Juan Trinidad	19418	960034	045 PCT
3. POM Carlos Perez	26639	948262	045 PCT
4. POF Massiel Pages	27457	953211	NARCBBX

Officer(s)	Allegation	Investigator Recommendation
A.SGT Luis Martinez	Abuse: Sergeant Luis Martinez entered and searched the boiler room in the basement of § 87(2)(b) in the Bronx.	§ 87(2)(b)

Case Summary

On May 10, 2017, § 87(2)(b) filed this complaint with IAB. On May 16, 2017, the CCRB received this complaint via IAB log # 17-17950.

On March 17, 2017, at approximately 7:07 p.m., officers responded to a 911 call for a domestic dispute at § 87(2)(b) in the Bronx. § 87(2)(b) who is the superintendent of the building and the resident of § 87(2)(b), came down from working on an upstairs apartment and saw two police officers, identified as Police Officer Martha Nova and Police Officer Juan Trinidad from the 45th Precinct, inside his apartment, speaking to his girlfriend, § 87(2)(b). As § 87(2)(b) approached his apartment, PO Trinidad ordered § 87(2)(b) away from the apartment door. On the patio of his apartment, PO Trinidad placed § 87(2)(b) in handcuffs. § 87(2)(b) stayed inside § 87(2)(b)'s apartment with PO Nova.

Approximately 20 minutes later, Sergeant Luis Martinez of Gun Violence Suppression Division – Zone Two, who was assigned to the 45th Precinct at the time of the incident, responded to § 87(2)(b)'s apartment with two additional plainclothes officers, identified as Police Officer Carlos Perez and Police Officer Massiel Pages of the 45th Precinct. Sgt. Martinez went inside § 87(2)(b)'s apartment to interview § 87(2)(b). Sgt. Martinez then approached § 87(2)(b) and asked for the key to get into the basement of his building. § 87(2)(b) refused and Sgt. Martinez grabbed § 87(2)(b)'s left hand that was holding his keys. § 87(2)(b) and Sgt. Martinez struggled as Sgt. Martinez attempted to get the keys from § 87(2)(b). PO Trinidad then grabbed § 87(2)(b)'s upper arms and told him to give Sgt. Martinez his keys. § 87(2)(b) then complied with PO Trinidad's command and gave Sgt. Martinez his keys. § 87(2)(b) then watched Sgt. Martinez use his keys to gain entry into the building. Although § 87(2)(b) did not see where the officers went, he assumed that the officers then used his keys to gain entry to the boiler room in the basement, which he keeps locked. § 87(2)(b) later learned that a firearm and knife were recovered from the boiler room (**Allegation A**).

§ 87(2)(b) was ultimately arrested for § 87(2)(b)

§ 87(2)(b), [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

The investigation was unable to obtain video footage of this incident due to the time lapse between when the complaint was filed with IAB and the incident date.

Mediation, Civil and Criminal Histories

- This complaint was ineligible for mediation due to § 87(2)(b)'s arrest and subsequent criminal trial.
- As of August 1, 2017, a Notice of Claim has not been filed in regards to this incident (**Board Review 1**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

■ [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) (Board Review 3).
- Sgt. Martinez has been a member of the NYPD for ten years and has 41 prior CCRB allegations pleaded against him involving 14 cases. Sgt. Martinez has no substantiated prior allegations (see officer history).

Potential Issues

§ 87(2)(b), § 87(2)(f)

Findings and Recommendations

Allegations Not Pleaded

Abuse of Authority: Police Officer Martha Nova and Police Officer Juan Trinidad entered and searched § 87(2)(b) in the Bronx.

In his statement to the CCRB, § 87(2)(b) testified that when he arrived outside of his apartment, he saw PO Nova and PO Trinidad inside, speaking to § 87(2)(b) § 87(2)(b) assumed that § 87(2)(b) had allowed the officers into the apartment because she was speaking to them. § 87(2)(b) testified that when the officers responded to her 911 call reporting that § 87(2)(b) § 87(2)(b) had assaulted her, she let the officers into the apartment. § 87(2)(g)

Allegation A – Abuse of Authority: Sergeant Luis Martinez entered and searched the boiler room in the basement of § 87(2)(b) in the Bronx.

On March 17, 2017, at approximately 7:07 p.m., § 87(2)(b) came downstairs from one of the apartments he had been renovating inside of § 87(2)(b) (Board Review 4). When § 87(2)(b) § 87(2)(b) exited the building, he saw officers standing inside his apartment, speaking to his girlfriend, § 87(2)(b) § 87(2)(b)'s apartment has a separate entrance from the main entrance to the building and can be entered directly from § 87(2)(b) § 87(2)(b) approached the officers and asked them why they were there. PO Trinidad told § 87(2)(b) to stay outside on the patio and explained the officers had received a call for a dispute. § 87(2)(b) § 87(2)(b) did not know who had called the police and PO Trinidad refused to tell him. PO Trinidad then placed § 87(2)(b) in handcuffs and placed him in the back of a marked police car parked across the street from his building.

Approximately 20 minutes later, Sgt. Martinez, PO Pages, and PO Perez approached the police car and removed § 87(2)(b) from the car. Sgt. Martinez asked § 87(2)(b) for his keys to the boiler room. § 87(2)(b) refused to give Sgt. Martinez the keys and asked why he needed them. Sgt. Martinez replied, "Because I need the keys." § 87(2)(b) told Sgt. Martinez he would need a search warrant to go into the boiler room and would not be getting his keys. Sgt. Martinez then grabbed § 87(2)(b)'s shoulder and the hand that was holding the keys, attempting to forcibly remove the keys from § 87(2)(b)'s hand. § 87(2)(b) moved his body back and forth to stop Sgt. Martinez from obtaining the keys. PO Trinidad then grabbed § 87(2)(b)

§ 87(2)(b) s upper arms from behind and told him to give Sgt. Martinez the keys. § 87(2)(b)
§ 87(2)(b) then complied.

Sgt. Martinez, PO Pages, and PO Perez then went to the front door of the building and used the keys to gain entry. § 87(2)(b) presumed they then used the keys to gain entry to the boiler room; although he could not see the officers go down to the boiler room from where he was standing by the police car. § 87(2)(b) was ultimately arrested for § 87(2)(b). A firearm was recovered from a hole in the wall of the boiler room by Sgt. Martinez. § 87(2)(b) denied owning a firearm, and denied assaulting and strangling § 87(2)(b) earlier that day. § 87(2)(b) and a few other private contractors are the only individuals with access to the locked boiler room. § 87(2)(b) does not keep any personal or professional items in the boiler room. He considers his work space to be a garage behind the building, though he does perform maintenance work on the boiler for the building.

§ 87(2)(f)
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§ 87(2)(g)
§ 87(2)(g) PO Nova stated that she and § 87(2)(b) stayed inside the apartment while the officers recovered the gun from the basement of the building. PO Nova did not see how the officers obtained the keys from § 87(2)(b).

§ 87(2)(g)
§ 87(2)(g) While PO Trinidad was guarding § 87(2)(b) who was seated in the back of the car, PO Perez approached § 87(2)(b) and asked him for his keys. § 87(2)(b) refused to give his keys to PO Perez and PO Trinidad. However, when he was told that § 87(2)(b) needed the keys to gain entry to the apartment while § 87(2)(b) was in police custody, § 87(2)(b) allegedly voluntarily gave the officers his keys.

Sgt. Martinez testified that when he responded to a radio run to verify an arrest at § 87(2)(b) he saw that PO Trinidad and PO Nova were inside the apartment speaking to § 87(2)(b) and § 87(2)(b) (Board Review 9). § 87(2)(f)
§ 87(2)(f)
§ 87(2)(f)
§ 87(2)(f)
§ 87(2)(f) Sgt. Martinez recalled that the keys to the basement were inside the apartment, but he did not recall how he obtained them or

who gave him the keys. An officer, Sgt. Martinez did not recall specifically who, then used the keys to gain entry to the main building and the boiler room in the basement. § 87(2)(b), § 87(2)(f)

§ 87(2)(f), § 87(2)(g)

§ 87(2)(f), § 87(2)(g)

§ 87(2)(b) Sgt. Martinez did not ask § 87(2)(b) or § 87(2)(b) questions about who had access to the boiler room, and he had no reason to believe anyone except for § 87(2)(b) had access to the room. Sgt. Martinez also testified that he believed he had consent from § 87(2)(b) to enter the boiler room to retrieve the firearm because she appeared to also have access to the room, and therefore, he did not need to obtain consent from § 87(2)(b) Sgt. Martinez did not consider obtaining a warrant before entering the basement because he believed that the firearm, which could potentially be accessed by anyone with a key to the boiler room, was an imminent threat to public safety. When asked how the firearm was an imminent threat to public safety, Sgt. Martinez stated that he did not know who had access to the room § 87(2)(b), § 87(2)(f) causing him to believe that the firearm should be removed from the boiler room.

In *People v. Jimenez* 22 N.Y.3d 717, 2014, the court found that: 1. The people failed to meet their burden as to the exigency requirement because neither the sergeant nor the officer testified that he feared for his safety or for the integrity of any destructible evidence where the testimony demonstrated that the appellant was cooperative and offered no resistance to the removal of the purse from her shoulder, the ensuing frisk, or the placing of handcuffs. 2. The unremarkable fact that a woman's purse appeared heavy was insufficient, on its own, to support a reasonable belief that it contained either a weapon or destructible evidence. 3. That the arrest occurred when police were responding to a radio run for a burglary did not translate to exigency because there was simply nothing connecting appellant or her companion to the burglary (**Board Review 10**). Even a bag within the immediate control of a suspect at the time of their arrest may not be subjected to a search incident to arrest, unless the circumstances leading to the arrest support a reasonable belief that the suspect may gain possession of a weapon or be able to destroy evidence located in the bag.

In *People v. Rodriguez* 69 N.Y.2d 159, 1987, the court found that it must consider whether the individual took precautions to maintain privacy, the manner in which the individual used the premises and whether the individual had the right to exclude others from the premises when deciding if the defendant had a legitimate expectation of privacy (**Board Review 11**).

§ 87(2)(g)

§ 87(2)(g) [Redacted]
[Redacted]

§ 87(2)(g) [Redacted]
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§ 87(2)(g) [Redacted]
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§ 87(2)(g) [Redacted]
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Squad: **9**

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date